

18816

CONGRESSIONAL RECORD — SENATE

August 13

Mr. SMATHERS. Mr. President, would the Senator from Vermont be willing to withdraw his request for a quorum call at this time? I should like to call up a conference report, which is a privileged matter. After it has been disposed of, I shall be glad to assist the Senator in obtaining an order for the yeas and nays.

The PRESIDING OFFICER. Does the Senator from Vermont withdraw his request for a quorum call?

Mr. PROUTY. Yes; I yield to the Senator from Florida for the purpose he has requested.

INTERNATIONAL COFFEE AGREEMENT—CONFERENCE REPORT

Mr. SMATHERS. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8864) to carry out the obligations of the United States under the International Coffee Agreement, 1962, signed at New York on September 28, 1962, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. WALTERS in the chair). The report will be read for the information of the Senate.

The legislative clerk read the report, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8864) to carry out the obligations of the United States under the International Coffee Agreement, 1962, signed at New York on September 28, 1962, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, and 6; and agree to the same.

HARRY F. BYRD,
RUSSELL B. LONG,
GEO. A. SMATHERS,
JOHN J. WILLIAMS,
FRANK CARLSON,

Managers on the Part of the Senate.

W. D. MILLS,
CECIL R. KING,
HALE BOGGS,
JOHN W. BYRNES,
THOS. B. CURTIS,

Managers on the Part of the House.

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. SMATHERS. Mr. President, the bill as passed by the House provides implementing legislation necessary to enable the United States to perform its responsibilities under the International Coffee Agreement. Specifically the bill authorizes the President, first, to limit imports of coffee from nonmember nations; second, to prohibit imports of coffee from member nations unless the imported coffee is accompanied by a certificate of origin; and third, to require recordkeeping with respect to importation, distribution, prices, and consumption of coffee.

The Senate accepted these provisions and added one amendment to the bill.

The amendment, offered by Senator DIRKSEN, provides a means for setting in motion the U.S. withdrawal from the International Coffee Agreement. Under the Senate bill, whenever the Congress finds in a concurrent resolution that there is an unwarranted increase in the price of coffee attributable in whole or in part to the agreement, and if the President finds, after referring the resolution to the Coffee Council, that no steps were taken within 30 days to remedy the situation, the United States would commence withdrawal under article 68.

The House conferees accepted this Senate amendment. After the bill passed the Senate, a question arose as to the constitutionality of the Dirksen amendment. Upon closer analysis, it developed that the constitutional issue was misstated and did not apply to the provision in the Senate bill. When they learned of this, the House conferees were not hesitant in agreeing to the Senate amendment.

I urge adoption of the conference report.

Mr. JAVITS. Mr. President, this is a serious matter. I should like to ask some questions about it. As I understand the situation at present, an amendment has been adopted which provides for a concurrent resolution of the Senate and House; is that not correct?

Mr. SMATHERS. The Senator is correct.

Mr. JAVITS. If such a resolution is approved, stating that a price increase is unreasonable or unwarranted—whatever words are used in the memorandum, is the President then bound, without any discretion on his part, to start proceedings to withdraw from the agreement?

Mr. SMATHERS. The President is not bound. The President must make a determination that the price increase in coffee results from the agreement. The Congress sends the President the concurrent resolution, and the President himself makes the finding. If the Coffee Council did not act, the President is instructed to take action in connection with the Coffee Council, to see if the quota cannot be increased, so that the price cannot be reduced. If, after that has been recommended by the President, the Coffee Council refuses to act, under the concurrent resolution the President is authorized and required at that time to institute proceedings under the International Coffee Agreement to take us out of it.

Mr. JAVITS. What discretion has the President? From what the Senator has said, it sounds as though the President were only a ministerial officer, taking instructions from Congress and making protests to the Coffee Council, and if they do not concur and raise the quota, withdrawing from the agreement.

Mr. SMATHERS. The President is required, as the Senator has just said, to proceed to take us out of the agreement at his discretion. His discretion is, having presented the case to the Coffee Council, that he can determine that the Coffee Council has taken appropriate action in order to meet the objections of

the Congress and of the country, and if that is the determination, he would not withdraw our membership. So, he has that much discretion.

Mr. JAVITS. Suppose the Coffee Council takes no action, and the President believes that in the interests of the Nation, notwithstanding the fact that the Council has taken no action and notwithstanding the fact that Congress has approved a resolution, he still does not wish to take us out of the agreement?

Mr. SMATHERS. The President can find that no action was necessary on the part of the Coffee Council, if he wishes to do so.

Mr. JAVITS. Let us understand each other, so that we do not talk in circles.

Even if mine is the only vote in opposition, I shall not vote for a conference report which deprives the President of the United States of his constitutional power to act, when he considers it in the highest interests of the United States to act in a certain way, with respect to an international treaty or an international agreement which is a part of the foreign policy of the United States, once we have entered into such an agreement or treaty. This is essential in terms of the prerogatives—which the Senate has always jealously guarded in approving international agreements—of the President to implement and carry them out, and also to carry out the foreign policy of the Nation.

I thoroughly agree with the Senator from Florida and the Senator from Illinois, that the action of Congress should have a strong effect upon the President. I agree with that. I understand why we are considering this concurrent resolution provision. What I am trying to avoid is an interpretation which will deprive the President of his constitutional authority, and that is the reason I am raising these questions.

I believe that it is important to make it clear that we are not stripping the President of his constitutional authority to retain treaties and agreements to which the United States is a party.

Mr. SMATHERS. I thank the able Senator from New York. I appreciate his comments. I share his concern. This was a question which was brought up in conference. After consultation with a number of other representatives of the State Department and others, it was felt that, in light of the record which had been made, such a provision would be entirely constitutional.

I should now like to yield to the distinguished author of the amendment, the able minority leader, the Senator from Illinois (Mr. DIRKSEN).

The PRESIDING OFFICER (Mr. BAYH in the chair). Does the Senator from Vermont yield to the Senator from Illinois?

Mr. PROUTY. Mr. President, I believe that I have the floor. I am, however, glad to yield to the Senator from Illinois.

Mr. DIRKSEN. I thank the Senator from Vermont for yielding to me.

If the Senator from New York will give heed for a moment, let me say to him that the State Department has cherished the identical opinion of the

1964

CONGRESSIONAL RECORD — SENATE

18817

Senator from New York. Accordingly, I asked the Department of Justice to run down all the precedents and make a determination of whether, in its judgment, the language was constitutional, or whether it was an invasion of the rights of the Chief Executive.

I was so notified, and was supplied with a copy of an opinion by the Department of Justice in connection therewith. The State Department then submitted alternative language which was open ended and did not satisfy me.

I indicated that at the appropriate time I would try to contrive some additional language. But at 2 or 3 o'clock yesterday afternoon, I was called by a representative of the Secretary of State and informed that they had performed the additional work and had come to the conclusion that it was not an invasion of the President's constitutional function; that they were quite satisfied with the language and were therefore willing to go along with it in conference, and that the alternative which they submitted could be disregarded.

Mr. JAVITS. Let me ask the Senator from Illinois, who apparently feels as I do, that the President should not be stripped of his constitutional powers, about a situation in which the President has transmitted a copy of such concurrent resolution as the Congress adopts to the International Coffee Council and the Executive Board; 30 days then expire, and the Council and the Board take no action. Nonetheless, the President finds that it is in the paramount national interest that he should not withdraw the United States from this agreement as an act—and I quote from the words of the amendment—"necessary to remedy the situation." If he finds, therefore, that he should not withdraw the United States from the International Coffee Agreement because that is not an act necessary to remedy the situation, do I correctly understand that he retains the constitutional authority not to withdraw?

Mr. DIRKSEN. The Senator is correct. I do not believe we can direct the President to do so and impair his power, because we would have to look at the various stages of the proceedings. We could come to the conclusion that the right of Congress to compel the abrogation of a treaty would only result in the President performing a ministerial function and nothing more. Under the Constitution, we do not believe that can be done. It must be remembered that this procedure involves a concurrent resolution, which the Congress adopts, and which the President does not sign.

Mr. JAVITS. Exactly. I am well aware of that.

Mr. DIRKSEN. I believe that sufficient latitude is necessary, and so do the Department of Justice and the Department of State.

Mr. JAVITS. The Senator from Illinois understands my reason for raising this question. As always, he is very gracious and understanding. If in good conscience as a lawyer one studies these words—and the Senator, as the author of the amendment stated clearly what he understood them to mean—this is not an effort to strip the President of his

fundamental constitutional authority, in the final analysis. However, the words could be read in that way. It might later have been argued that the President is a tyrant, that he is not doing what Congress told him to do, that we would not have obtained the agreement if we had not thought it would work, and that it was airtight.

But the Senator has given the matter constitutional validity and accommodation to the separate powers of the President. Therefore, I am very grateful to him.

Mr. DIRKSEN. I should like to add one thought. I do not believe that Congress can ever mandate the President to do something he does not wish to do when the constitutional right is on his side, because obviously such an effort would have to fall on the basis of being unconstitutional.

Mr. JAVITS. I thank the Senator from Illinois. I know that he understands what I am trying to get at.

Mr. DIRKSEN. Oh, yes. I understand.

Mr. JAVITS. If we had not had this colloquy, it might have appeared that we had made it a condition upon which the President must act and that the President has not done this, that, or the other thing, and so on. I am entirely satisfied with the Senator's explanation.

Mr. SMATHERS. Mr. President, I appreciate the Senator's having raised the point, and I am grateful to the Senator from Illinois for having made a very fine explanation of the situation. This is the identical expression of many members of the conference.

Mr. President, I urge adoption of the report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

ARTICLES IMPORTED FOR USE OF CERTAIN UNIVERSITIES—CONFERENCE REPORT

Mr. SMATHERS. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4364) to provide for the free entry of one mass spectrometer for the use of Oregon State University and one mass spectrometer for the use of Wayne State University. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4364) to provide for the free entry of one mass spectrometer for the use of Oregon State University and one mass spectrometer for the use of Wayne State University, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same.

That the House recede from its disagreement to the amendment to the title of the bill; and agree to the same.

HARRY F. BYRD,
RUSSELL B. LONG,
GEO. A. SMATHERS,
JOHN J. WILLIAMS,
CARL T. CURTIS,

Managers on the Part of the Senate.

W. D. MILLS,
CECIL R. KING,
HALE BOGGS,
JOHN W. BYRNES,
THOS. B. CURTIS,

Managers on the Part of the House.

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had agreed to the amendment of the Senate to each of the following bills of the House:

H.R. 1988. An act to provide for the settlement of claims of certain residents of the Trust Territory of the Pacific Islands; and

H.R. 8334. An act to transfer to the Salt River Pima-Maricopa Indian community certain lands within the Salt River Pima-Maricopa Indian Reservation.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 3198) to promote the economic and social development of the Trust Territory of the Pacific Islands, and for other purposes.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 3846) to establish a land and water conservation fund to assist the States and Federal agencies in meeting present and future outdoor recreation demands and needs of the American people, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. ASPINALL, Mr. MORRIS, Mr. O'BRIEN of New York, Mr. SAYLOR, and Mr. KYL were appointed managers on the part of the House at the conference.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11296) making appropriations for sundry independent executive bureaus, boards, commission, corporations, agencies, and offices, for the fiscal year ending June 30, 1965, and for other purposes; that the House receded from its disagreement to the amendments of the Senate numbered 186, 187, 208, and 220 to the bill, and concurred therein, and that the House receded from its disagreement to the amendments of the Senate numbered 28 and 188 to the bill, and concurred therein, each with an amendment, in which it requested the concurrence of the Senate.